IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kevin A. Retlich	§	Confirmation No.: 7591
	§	
	§	Group Art Unit: 2178
Application No.: 09/672,935	§	
	§	Examiner: Stork, Kyle R.
Filed: September 28, 2000	§	
	§	
For: MULTILINGUISTIC INDUSTRIAL CONTROL AND MONITORING SYSTEM	§	Atty. Docket: ALBR:0088/YOD/EUB/LIU 00AB191

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF TRANSMISSION OR MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d), or is being transmitted via the Office electronic filing system in accordance with 37 C.F.R. § 1.6(a)(4), or is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

March 19, 2008	**/Lee Eubanks/**
Date	L. Lee Eubanks IV

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

This Reply Brief is being filed pursuant to 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed on January 24, 2008. Specifically, this Reply Brief addresses the Examiner's continuing pattern of misinterpretation of the Tkacs et al. reference, alleged admissions in Appellant's specification (the "Specification"), and the pending claims. However, in the interest of brevity, Appellant addresses below only those issues or arguments raised in the Examiner's Answer that are particularly noteworthy. In particular, Appellant has addressed several erroneous assertions by the Examiner with regard to facts alleged to be inherently disclosed by alleged admissions in the Specification. Further, in view of Appellant's attempt to avoid repetition in this Reply, Appellant respectfully requests that the Board consider the remarks set forth below along with Appellant's complete arguments set forth in the previously filed Appeal Brief.

Referring generally to the Examiner's "Response to Arguments" on pages 10-13 of the Examiner's Answer, Appellant respectfully submits that the Examiner has still failed to present a *prima facie* case of obviousness with regard to claims 1-28 of the present application. Specifically, Appellant reemphasizes that each of the independent claims pending in the present application generally recites the *storing of component identifying data* within a respective component. For example, independent claim 1 recites, *inter alia*, "… components in which *identifying component data is stored*" (emphasis added). Independent claim 9 recites, *inter alia*, "…accessing parameter and *identity data from* the components" (emphasis added). Similarly, independent claim 20 recites, *inter alia*, "…each component storing its respective *identity data*" (emphasis added). In other words, each of these claims *clearly* requires that the recited components are capable of *storing data* indicative of the identity of a respective component. Appellant respectfully submits to the Board that the Examiner's comments in response to the arguments set forth in the previously filed Appeal Brief fail to clearly set forth how the storing of *component identifying data* within a component is disclosed through either the individual or combined teachings of the Tkacs et al. reference, the Bapat reference, or the allegedly admitted prior art of the Specification.

In maintaining the rejections of the presently pending claims, the Examiner has acknowledged that the Tkacs et al. and Bapat references are not relied upon for teaching the storing and/or collecting of *identifying component data stored within the components themselves*, as variously recited by the independent claims. *See* Examiner's Answer, pages 4 and 11.[1] Instead, the Examiner has continued to rely, erroneously, on a single paragraph in Appellant's specification to remedy this deficiency. For the Board's convenience, Appellant has reproduced the relevant passage below:

[1] On page 4 of the Examiner's Answer, the Examiner states that the Bapat reference is relied upon solely for the teaching of allocating data into fields. On page 11 of the Examiner's Answer, the Examiner explicitly acknowledges that the Tkacs et al. reference is not relied upon for disclosing components storing component identifying data.

> A wide variety of systems are available for control and monitoring functions, particularly in industrial settings. Such systems may include components which regulate the application of electrical power to loads, such [as] electric motors. In a motor control center, for example, circuit protection devices, component protection devices, drives, starters, relays, disconnects, and so forth are interconnected to carryout desired industrial processes. The *processes may be defined by pre-established routines, and may rely upon sensed parameters* and operator-induced command inputs, all of which are transmitted through a data network.

Application, page 1, lines 12-19 (emphasis added). With regard to this cited passage, the Examiner alleges that the statement that industrial "processes…may rely upon sensed parameters" is somehow an admission of prior art by Appellant with respect to the storing and/or collecting of *identifying component data stored within the components themselves*, as variously recited by the independent claims. *See* Final Office Action mailed May 3, 2007, page 3; *see also* Examiner's Answer, page 4. Appellant respectfully disagrees. To the contrary, although the above cited passage from the Specification does appear to disclose components for regulating electrical power, including relays, drives, starters, disconnects, and the like, Appellant submits there is absolutely no explicit teaching or suggestion that these components are capable of storing *component identifying data*.

In reaching the above conclusion, it appears that the Examiner has relied on a theory of inherency. However, it is well established case law that in relying upon a theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). As will be discussed in further detail below, the Examiner's assertion that the components inherently store data is based on an incorrect and false assumption as to the allegedly relevant passage of the Specification in which the Examiner has erroneously concluded: (1) that the data (e.g., parameters) sensed via the industrial process disclosed in the Specification *is necessarily*

sensed *from* the disclosed components, and (2) that the *sensing* of parameters *necessarily* implies that the sensed parameter data *must* be stored within the components.

First, Appellant notes that the cited passage does not, in fact, *necessarily* teach or suggest that the sensed parameters are sensed from or stored in the control components, as asserted by the Examiner. Instead, the cited passage merely states that the control components may work collectively to carry out the process, and that the process *may* rely on sensed parameters. The Examiner's assertion in the Examiner's Answer appears to be based on an unsupported and conclusory statement that because "data [is] sensed from this process, which is made up of components, [the data] must be sensed from these components." Examiner's Answer, page 12 (emphasis added). Appellant submits, however, that this conclusion appears to be contradictory to the general operation of components within a process. Indeed, in numerous applications, such parameters are sensed *by*, rather than *from*, the control components.

For example, as will be appreciated by one skilled in the art, many components (such as the disclosed relays, disconnects, and the like) are configured to "sense" (e.g., detect) various physical phenomenon (such as the electric current flowing through a conductor, the temperature, and so forth) and react if the sensed phenomenon is outside a certain desired range. For instance, in one exemplary system, a relay may be mechanically configured to sense the current passing to a motor from a power source through a conductor, and to disconnect the motor from the power source if the current exceeds a certain threshold. In another system, a disconnect may include a mechanical and temperature-responsive switch (which may employ a bi-metal strip, for instance) that opens a power distribution circuit when the sensed temperature exceeds a certain level. In each of these two exemplary systems, the component is mechanically configured to produce a result (e.g., open the circuit) in response to a sensed physical phenomenon or parameter. In other embodiments, control signals (on, off, reset, or the like) may be distributed to such components in response to sensed operating parameters, or in response to operator commands. Indeed, although these control components may be triggered or

engaged by sensing a particular operating parameter, there is simply nothing in the passage of the Specification relied upon by the Examiner that discloses, either explicitly or inherently, that these operating parameters are *necessarily* sensed from control components.

Second, Appellant further emphasizes that even assuming, for the sake of argument, that the cited passage from the Specification could be construed as inherently disclosing that the "sensed parameters" are sensed from the disclosed components, such an interpretation does not *necessarily* (e.g., inherently) set forth that the component from which the parameter data is sensed *stores* the sensed data. For example, under this interpretation, the Examiner appears to have presumed that some type of sensor device may be employed to sense parameters allegedly "stored" within the components. The plain meaning of the term "sensor" is generally regarded as "a device that responds to a physical stimulus (as heat, light, sound, pressure, magnetism, or a particular motion) and transmits a resulting impulse (as for measurement or operating a control)." Definition 1 of "sensor," *The Merriam Webster Collegiate Dictionary*, 11th ed. (2003). To provide a simple analogy, Appellant notes that a thermometer is a very basic type of sensor which is designed to sense or detect temperature related data. For example, a thermometer may be operatively coupled to a component to sense the operating temperature of the component, if desired. To provide a further analogy, a current meter (e.g., ammeter) may be operatively coupled to the above discussed relay device, for example, and employed for sensing or detecting the amount of current passing to a motor from a power source through a conductor. However, neither the temperature sensed by the thermometer nor the current level sensed by the current meter would be regarded by one skilled in the art as being "stored" within the components from which they were sensed.

The Examiner's position that parameter data (e.g., temperature, current) *sensed* by a sensor constitutes *stored* data appears to be based on the erroneous assumption that "data sensed from these components *must* be stored upon these components for at least a short quanta of time … [and] therefore, the sensing of data from a component is

analogous to obtaining data stored upon the component." Examiner's Answer, page 12 (emphasis added). Referring once again to the above example regarding the measurement of a current flowing through a component via a current meter, the Examiner's interpretation is essentially the equivalent of stating that a signal being transmitted or propagated along a wire is *stored* on or in the wire. This assertion is simply just not true. For example, Appellant notes that the term "stored" is generally defined as "to place or leave in a location (as a warehouse, library, *or computer memory*) for preservation or later use or disposal." Definition 3 of "stored," *The Merriam Webster Collegiate Dictionary*, 11th ed. (2003) (emphasis added). Appellant submits that the temperature of a component or the amount of current flowing through a component which is *sensed* or measured by a sensor device at a given point in time during the operation of a process would certainly not be regarded as "stored data," as alleged by the Examiner. In sharp contrast, data sensed by a sensor is merely a measurement of the particular parameter at a given point in time. That is, although a process parameter may be measured at a first point in time, the data point sensed at that first point in time is transient and *only* exists during the first point in time in which the associated sensor performs a measurement or sensing function. The allegedly admitted prior art of the Specification makes absolutely no mention, nor is there any logical rationale for assuming, that the sensed data is "stored" (e.g., for later use) such that the sensor may re-acquire or "re-sense" the parameter data corresponding to the first point in time at a later second point in time. As such, Appellant reiterates that the mere fact that parameter data (e.g., a temperature or current level) *may* be sensed does not *necessarily* indicate that such parameter data is *stored* within the component, as generally recited by the pending claims. Indeed, one skilled in the art would readily appreciate that sensors, when employed in the context of industrial process control, are generally regarded as sensing *transient* occurrences or events, *not* stored data. Accordingly, Appellant respectfully submits to the Board that neither of the Examiner's assertions *necessarily* flows from the mere statement in the Specification that industrial "processes … may rely upon sensed parameters."

Still further, Appellant submits that even assuming, hypothetically, that *both* of the Examiner's misguided assertions regarding the alleged inherent teachings of Appellant's specification have *any* merit whatsoever, the parameter data allegedly sensed *from* the disclosed components is certainly not analogous in any way to the "component identifying data" recited in the pending claims. As discussed above, the sensed parameter data may be representative of operational parameters, such as temperature, current, voltage, power, or the like. Nothing, however, suggests that this data could be capable of providing any sort of component identifying information. Indeed, this point was emphasized in the previously filed Appeal Brief. *See* Appeal Brief, page 11. The remarks set forth in the Examiner's Answer, however, fail to provide any logical explanation or reasoning as to how the "sensed parameter data" discussed in the allegedly relevant portions of the Specification could possibly be construed as reading upon the recited "component identifying data." Accordingly, Appellant submits to the Board that the Examiner has failed to demonstrate, either explicitly or inherently, that the storing and/or collecting of identifying component data stored within components *necessarily* flows from the statement in the Specification that industrial "processes … may rely upon sensed parameters." Therefore, in view of this deficiency, among others, the cited references, alone or in combination, cannot render obvious independent claims 1, 9, or 20, or any of those claims depending therefrom.

Additionally, Appellant notes that each of independent claims 1, 9, and 20 further recites that the *component identifying data* stored within the recited components is used by a monitoring station to build a real-time view of the components. However, for at least the reasons set forth above, the allegedly admitted prior art of the Specification, the Tkacs et al. reference, and the Bapat reference, alone or in combination, fail to teach or suggest component identifying data stored within components and, therefore, cannot possibly disclose building a real-time view using the missing *component identifying data stored within components*. Accordingly, Appellant respectfully submits to the Board that the cited references, alone or in combination, cannot render obvious claims 1, 9, and 20 for at least this additional reason.

Conclusion

In summary, Appellant reiterates that the Examiner, for at least the reasons discussed above, has failed to establish, either explicitly or inherently, a *prima facie* case of obviousness with regard to independent claims 1, 9, and 20, or any claims depending therefrom. It should be noted, however, that the foregoing are only *reiterative* points in response to the Examiner's Answer and regarding the reasons why the pending claims are believed to be allowable. As such, Appellant also relies fully upon the previously filed Appeal Brief and respectfully requests that the Board carefully review the claims in view of the complete arguments advanced in the Appeal Brief in addition to the remarks set forth in the present Reply.

Respectfully submitted,

Date: March 19, 2008

/Lee Eubanks/

L. Lee Eubanks IV
Reg. No. 58,785
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545